

Internal Revenue Service

District Director

Department of Treasury

Quality Review Staff
Stop 516-D, Room 1502
P.O. Box 1055
Atlanta, GA 30370

Person to Contact:

Telephone Number:

Employer ID Number:

File Folder Number:

Date:

FEB 05 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED:

Dear Sir or Madam:

We have considered your application for recognition of exemption under section 501(c)(6) of the Internal Revenue Code.

The information submitted disclosed that you were incorporated under the non profit Laws of the State of [REDACTED] on [REDACTED] 7. You are now operating in the State of [REDACTED] and have submitted a Certificate of Authority to operate therein as approved by the Secretary of State of [REDACTED] on [REDACTED].

Your purposes as stated in part in your Articles of Incorporation are as follows:

- a. To facilitate the exchange of information, experience and concepts related to [REDACTED] equipment.
- b. To request new features and enhancements from the manufacturers of [REDACTED] equipment
- c. To share ideas, resources, and solutions among user members and develop programs which will benefit the membership.
- d. To promote cooperation with [REDACTED] through open, ongoing dialogue.

Your primary activities include annual conferences and quarterly newsletters. You have stated that the primary purpose of the annual

[REDACTED]

conference is to inform the membership of the product utility, features, future direction and problems of the product in which a unified voice of the membership is needed to obtain resolution from the manufacturer. You have stated that the newsletter is the primary vehicle outside of the annual conference to provide product information and states of current issues. Review of the Conference Agenda as well as your newsletters reflects that the [REDACTED] and its related products which are manufactured solely by [REDACTED] are the only products involved or addressed in your activities.

You have also submitted copies of Press Releases issued by your organization and technical updates from the manufacturer directed to user group members all of which are applicable solely to [REDACTED] and its related products.

Your bylaws provide for a regular membership class with voting rights and an associate membership class without voting rights. Regular members are limited to users of [REDACTED] including those who have systems on order as well as already installed and in use. Your associate membership class is limited to distributors and vendors of [REDACTED]. You have stated in your application that the manufacturer, [REDACTED], is an associate member. Though associate members have no voting rights, your bylaws provide that associate members are allowed to participate in the discussion on all issues brought before the membership. Your bylaws further provide that your Board of Directors may terminate the membership of any member who is no longer a user of [REDACTED] by majority vote.

The information submitted in your application reflects that your income is received from membership fees and conference fees and your expenditures are primarily attributed to your conferences and publications.

Section 501(a) of the Code provides, in relevant part, that an organization described in subsection (c) shall be exempt from taxation.

Section 501(c)(6) of the Code provides for the exemption from federal income taxation of business leagues not organized for profit; no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides, in relevant part, that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. The activities of the organization

must be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

In National Muffler Dealers Association, Inc. v. United States, 440 U. S. 472, 59 L. Ed. 2d 519 (1979), the United States Supreme Court affirmed a lower court decision that an organization of muffler dealers, franchised by Midas International Corporation, which had confined its membership to Midas dealers and its activities to the Midas muffler business, was not a 'business league' within the meaning of section 501(c)(6) of the Code. The Court validated the 'line of business' test set forth in section 1.501(c)(6)-1 of the regulations and recognized the body of authority interpreting that test to mean that an organization's activities must be directed to the improvement of business conditions in an 'entire industry' or 'all components of an industry within a geographic area.' 440 U. S. at 482-483, 59 L. Ed. 2d at 528.

In National Prime Users Group, Inc. v. United States, 667 F. Supp. 250 (D. Md. 1987), 60 AFTR 2d 87-5544 (D. Md. 1987), citing National Muffler Dealer's Association, Inc. v. United States, *supra*, the court held that National Prime Users Group (NPUG), an organization comprised of persons which owned, leased, or operated computer equipment manufactured by Prime Computer, Inc. (Prime), was not a 'business league' within the meaning of section 501(c)(6) of the Code. The court emphasized that (i) the name of the organization clearly indicated that the organization was intended to promote Prime's products, (ii) the operation of the organization only served Prime users, (iii) the purpose of the organization as set forth in its corporate documents was to provide an organized method of communication among Prime users, (iv) there was no evidence that membership in the organization was open to non-Prime users, (v) the majority of presentations made at the organization's conferences were made by Prime representatives, (vi) Prime was the only computer company involved in the conferences, (vii) all of the topics addressed in the organization's newsletters and conferences were directed to the use of Prime computers, and (viii) Prime used the organization as an important marketing vehicle. The court concluded that NPUG 'endeavored to serve solely the interests of Prime.' 667 F. Supp. at 256. The court found that the organization's activities provided a competitive advantage to Prime. The court held that there was a consistent focus of its activities on Prime products and users.

Rev. Rul. 74-147, 1974-1 C. F. 136, holds that an organization comprised of members who represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers, the purpose of which is to improve the efficiency of its members' use of computers, qualifies for exemption under section 501(c)(6) of the Code. The common business

business interest shared by the members of the organization is the common business problems concerning the use of digital computers.

Rev. Rul. 83-164, 1983-2 C. B. 95, distinguishing Rev. Rul. 74-147, ~~supra~~, holds that an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption under section 501(c)(6) of the Code. The activities of the organization were limited to users of a particular computer and thus found to be benefiting a segment of a line of business rather than improving the business conditions of one or more lines of business.

As in the National Prime Users case, your name; your purpose as set forth in your organizational documents; your conferences and publications and the limitation of your membership to NEAX 2400 IMS users, vendors and distributors reflects that your operations are focused solely on the product of one manufacturer.

In accordance with the rationale of Rev. Rul. 83-164, the limiting of your activities to the users of a specific bond product provides a competitive advantage to the manufacturer and to its customers at the expense of its competitors and their customers. Therefore, your organization's activities are not directed towards the improvement of business conditions in one or more lines of business within the meaning of section 1.501(c)(6)-1 of the regulations.

Accordingly, we conclude that you are not described under section 501(c)(6) of the Code or any other section of 501(a).

Since your organization is not exempt you are required to file Federal income tax returns on Form 1120.

If you do not agree with our proposed denial, we recommend that you request a conference with a member of the Regional Director of Appeals Staff. Your request for a conference should include a written appeal signed by an authorized officer giving the facts, law, and any other pertinent information to support your position as explained in the enclosed Publication 892. If you are to be represented by someone who is not one of your authorized officers, he/she will need to file a power of attorney or tax information authorization and be qualified to practice before the Internal Revenue Service as provided in Treasury Department Circular No. 230. The conference may be held at the Regional Office or, if you request, at any mutually convenient District Office.

[REDACTED] [REDACTED] [REDACTED]

If we do not hear from you within 30 days, this letter will become our final determination.

Sincerely yours,

[REDACTED]

[REDACTED]

District Director

Enclosure:
Publication 892